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Attorneys for Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:
LIGHTHOUSE LODGE, LLC
Debtor-in-Possession.

Case No. 09-52610

Chapter 11

DC No. KDG-10

Date: January 6, 2010

Time: 10:30 a.m.

Place: United States Bankruptcy Court
280 S. First Street

San Jose, California

Judge: Honorable Robert L. Efremsky

**SECOND APPLICATION FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES BY ATTORNEYS FOR DEBTOR**

To the Honorable Robert L. Efremsky, United States Bankruptcy Judge:

The Second Application for Interim Compensation and Reimbursement of Expenses by Attorneys for Debtor (the "Application") of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP ("Klein, DeNatale" or "Applicant") respectfully represents:

I. NOTICE.

Notice of the hearing on this Application has been provided pursuant to Federal Rule of Bankruptcy Procedure 2002.

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1 **II. INTRODUCTION.**

2 Klein, DeNatale is a professional law corporation, each of whose attorneys are duly
3 licensed and admitted to practice before this Court. Klein, DeNatale is the attorney for
4 Lighthouse Lodge, LLC, the debtor and debtor in possession in the above-captioned bankruptcy
5 case (the "Debtor"), having been so retained under general retainer by order of this Court
6 authorizing and approving such employment. As such attorney, Klein, DeNatale has performed
7 various legal services for the Debtor, some of the particulars of which are hereinafter set forth.

8 **III. EMPLOYMENT AUTHORIZATION.**

9 On April 14, 2009, this Court entered its Order Authorizing Employment of General
10 Counsel which authorized the Debtor to employ Klein, DeNatale under a general retainer on an
11 hourly basis to provide aid and assistance in the administration of this case, to provided
12 continued representation in all negotiations and proceedings involving creditors and other
13 parties in interest, to prepare and assist in the confirmation of a plan, and to represent Debtor in
14 all other legal aspects of the Chapter 11 case. A copy of this order is attached hereto as **Exhibit**
15 **"A"** and by this reference incorporated herein.

16 **IV. KLEIN, DENATALE'S ATTORNEYS FEES AND EXPENSES.**

17 Klein, DeNatale seeks approval of its attorneys' fees and expenses incurred in this
18 Chapter 11 case from July 24, 2009 through November 30, 2009 in the amount of \$19,270.50
19 and \$587.34 respectively.

20 After application of Klein, DeNatale's Chapter 11 advance retainer of \$0, the net
21 amount prayed for by Klein, DeNatale is \$19,857.84.

22 **V. HISTORY AND PRESENT POSTURE OF CASE.**

23 The Debtor filed its Chapter 11 Case on April 9, 2009 (the "Petition Date"). The
24 Debtor has at all times acted as a debtor in possession. No official committee of unsecured
25 creditors has been appointed in this case.

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1 **A. GENERAL BACKGROUND.**

2 The Debtor is a California limited liability company, formed in 1998. In October of
3 2004, the Debtor amended its operating agreement, wherein Jacci Pflieger was named as the
4 managing member of the Debtor.

5 The Debtor is a 95-room hotel located in Pacific Grove, California. The Debtor's
6 operation of the hotel generates revenue through guest room bookings, meeting room rentals,
7 food and beverage services, and other guest services such as telephone and Internet use.

8 As of the Petition Date, the Debtor employed approximately 35 employees. In its last
9 fiscal year, the Debtor realized roughly \$3.2 million in gross revenues. The Debtor's
10 obligations as of the Petition Date consisted of approximately \$8,756,000 in secured debt,
11 \$291,281 in priority unsecured debt and approximately \$5,725,490 in general unsecured debt,
12 owed to more than 175 suppliers and other vendors. Included in the general unsecured debt
13 category is an obligation (disputed in part) owed to Geneva Real Estate (Geneva) in the amount
14 of \$5,511,392. Geneva is an "insider" since it is controlled by one of the Debtor's member's,
15 Carl Miller, who owns a 20% interest in the Debtor.

16 On September 16, 1998 the Debtor executed a promissory note with Nationsbank, N.A.,
17 the predecessor to Orix, in the original principal amount of \$9,300,000 (the "Note"). The Note
18 was secured by a first priority Deed of Trust against the Hotel dated September 16, 1998, and,
19 as noted above, a continuing security interest in the rents and profits and the personality
20 generated and owned by the Debtor. (collectively, the "Loan Documents"). Under the terms of
21 the Loan Documents, Orix, as successor to Nationsbank, N.A., holds a first priority lien against
22 substantially all of the Debtor's real and personal property assets, including rents generated by
23 the operation of the Hotel.

24 Based upon various events of default under the terms of the Orix Loan Documents, Orix
25 on March 2, 2009, accelerated all amounts due and owing there under.

26 On March 23, 2009, Orix filed a complaint in the Superior Court of the State of
27 California, Monterey County, seeking specific performance and the appointment of a receiver.

28 Accordingly, rather than suffer the substantial disruption and harm to both the Debtor's

1 operations and the Debtor's ongoing efforts to sell the hotel, that would result from the
2 installation of a receiver, the Debtor commenced this Chapter 11 case on the Petition Date.

3 **B. DEBTOR'S ASSETS AND LIABILITIES.**

4 (1) The Debtor's Principal Assets: Currently, the Debtor's principal asset
5 are comprised of (i) real property located in Pacific Grove, California, where Debtor operates
6 its hotel, valued at approximately \$18,5000,000.00; (ii) cash on deposit in various bank
7 accounts, totaling more than \$213,400.00 as of the Petition Date; and (iii) accounts receivable
8 in the amount of \$413,541.69 as of the Petition Date, of which \$221,862.55 is uncollectable.

9 (2) The Debtor's Principal Liabilities: As of August 6, 2009, the total
10 scheduled and filed claims are as follows: (i) secured claims: \$8,940,897.97; (ii) priority tax
11 claims: \$236,146.79; and (iii) general unsecured claims: \$5,753,188.98 (of which
12 \$5,511,392.19 is disputed). Of the total asserted claims, \$5,518,874.42 represents the claims of
13 insiders of the Debtor. The actual general unsecured claims may be higher based on the filing
14 of claims on or before the bar date for filing non-governmental proofs of August 11, 2009.

15 **C. SUMMARY OF EVENTS DURING CHAPTER 11 CASE.**

16 Below is a summary of significant events during the Chapter 11 case, further details of
17 which in the applicable project billing code below.

- 18 1. Preparation of Debtor's schedules, attendance at Initial Debtor Interview and
19 Meeting of Creditors;
- 20 2. Sought and obtained authorization to use cash collateral based upon stipulation
21 with Debtor's largest secured creditor, ORIX Financial;
- 22 3. Sought and obtained authorization to employ Debtor's counsel, accountant,
23 realtor and appraiser;
- 24 4. Sought and obtained authorization to extend the exclusivity period to December
25 10, 2009; and
- 26 5. Began preparation of the Debtor's Plan and Disclosure Statement.

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1 **VI. PROJECT BILLING.**

2 Klein, DeNatale has included the following project billing categories in this case:

3 **A. CASE ADMINISTRATION (GENERALLY)**

4 This project billing category includes matters of a general nature that do not fit more
5 logically in another, more discrete project billing category. Also included is Applicant's
6 preparation of memoranda regarding action items in the case.

7 **Project Summary**

8 Attorneys' fees related to this project billing category are set forth and described in
9 detail in **Exhibit "B"** hereto and by this reference incorporated herein, which exhibit identifies
10 the individual professionals who performed specific services by the initials indicated below and
11 can be summarized as follows:

12 Professional hours expended:

| <u>Professional/Initials</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|------------------------------|--------------|-------------|---------------|
| Hagop T. Bedoyan (HTB) | 16.40 | \$285.00 | \$4,674.00 |
| Stephen C. Pickup (SCP) | 1.40 | \$85.00 | \$119.00 |

15 **B. ASSET DISPOSITION.**

16 This project billing category includes Applicant's attorneys' fees relative to the sale or
17 divesting of the Debtor's assets.

18 **Project Summary**

19 Attorney's fees related to this project billing category are set forth and described in
20 detail in **Exhibit "C"** hereto and by this reference incorporated herein, which exhibit identifies
21 the individual professionals who performed specific services by the initials indicated below and
22 can be summarized as follows:

23 Professional hours expended:

| <u>Professional/Initials</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|------------------------------|--------------|-------------|---------------|
| Hagop T. Bedoyan (HTB) | 18.50 | \$285.00 | \$5,272.50 |

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1 **C. FEE AND EMPLOYMENT APPLICATIONS.**

2 This project billing category includes Applicant's attorneys' fees related to its work
3 related to preparation of employment applications. The Debtor also required the employment
4 of an appraiser, specifically Hanna and Associations. This project billing category includes the
5 preparation of all pleadings regarding such employment, as well as preparation of all pleadings
6 relative to fee applications.

7 **Project Summary**

8 Attorney's fees related to this project billing category are set forth and described in
9 detail in **Exhibit "D"** hereto and by this reference incorporated herein, which exhibit identifies
10 the individual professionals who performed specific services by the initials indicated below and
11 can be summarized as follows:

12 Professional hours expended:

| | Professional/Initials | Hours | Rate | Amount |
|--|------------------------------|--------------|-------------|---------------|
| | Hagop T. Bedoyan (HTB) | 4.40 | \$285.00 | \$1,254.00 |
| | Jacob L. Eaton (JLE) | 3.50 | \$185.00 | \$647.50 |

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16 **D. OPERATIONS.**

17 This project billing category includes Applicant's attorneys' fees related to the day-to-
18 day operations of the Debtor's business which do not fit within a more discrete project billing
19 category.

20 **Project Summary**

21 Attorney's fees related to this project billing category are set forth and described in
22 detail in **Exhibit "E"** hereto and by this reference incorporated herein, which exhibit identifies
23 the individual professionals who performed specific services by the initials indicated below and
24 can be summarized as follows:

25 Professional hours expended:

| | Professional/Initials | Hours | Rate | Amount |
|--|------------------------------|--------------|-------------|---------------|
| | Hagop T. Bedoyan (HTB) | 0.80 | \$285.00 | \$228.00 |

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1 **Project Summary**

2 Attorney's fees related to this project billing category are set forth and described in
3 detail in **Exhibit "H"** hereto and by this reference incorporated herein, which exhibit identifies
4 the individual professionals who performed specific services by the initials indicated below and
5 can be summarized as follows:

6 Professional hours expended:

| Professional/Initials | Hours | Rate | Amount |
|------------------------|-------|----------|------------|
| Hagop T. Bedoyan (HTB) | 21.90 | \$285.00 | \$6,241.50 |

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9 **VII. PROJECT BILLING SUMMARY.**

10 A summary of all project billing categories used by Applicant in this case, including
11 hours of professional time devoted to each category and the amount of attorneys' fees included
12 therefore, is attached hereto as **Exhibit "I"** and by this reference incorporated herein.

13 **VIII. BILLING SUMMARY.**

14 In the course of its representation of the Debtor in these matters from July 24, 2009
15 through November 30, 2009, Klein, DeNatale has devoted in excess of 70 hours of professional
16 time in the performance of such services, including those set forth hereinabove, and can be
17 summarized as follows:

18 Professional hours expended:

| Professional/Initials | Hours | Rate | Amount |
|-------------------------|--------------|----------|--------------------|
| Hagop T. Bedoyan (HTB) | 64.40 | \$285.00 | \$18,354.00 |
| Jacob L. Eaton (JLE) | 3.50 | \$185.00 | \$647.50 |
| Sarah N. Stauch (SNS) | 1.50 | \$100.00 | \$150.00 |
| Stephen C. Pickup (SCP) | 1.40 | \$85.00 | \$119.00 |
| Totals | 70.80 | | \$19,270.50 |

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23 **IX. VOLUNTARY REDUCTION OF ATTORNEYS' FEES.**

24 In preparing this Application and reviewing time entries for services rendered by Klein,
25 DeNatale in this case, Applicant has reduced its attorneys' fees by \$1,335.13.

26 **X. REIMBURSEMENT OF EXPENSES.**

27 Klein, DeNatale has also incurred expenses in the sum of \$587.34 from July 24, 2009
28 through November 30, 2009 as itemized in **Exhibit "J"** attached hereto and by this reference

1 incorporated herein. The amounts currently charged by Klein, DeNatale for ordinary and
2 customary expenses are as follows:

| | | |
|----|-----------------------------------|-------------|
| 3 | Automobile travel ¹ : | 55¢/mile |
| 4 | Faxes: | 20¢/page |
| 5 | Internal photo-copying: | 20¢/page |
| 6 | Computerized research: | actual cost |
| 7 | Court reporters fees: | actual cost |
| 8 | Document storage & disposal: | actual cost |
| 9 | Filing fees: | actual cost |
| 10 | Lien searches: | actual cost |
| 11 | Long distance telephone: | actual cost |
| 12 | Messenger ² : | actual cost |
| 13 | Other travel (e.g. airfare): | actual cost |
| 14 | Outside photo-copying: | actual cost |
| 15 | Overnight delivery ³ : | actual cost |
| 16 | Parking ⁴ : | actual cost |
| 17 | Postage: | actual cost |
| 18 | Printing: | actual cost |
| 19 | Process service: | actual cost |
| 20 | UCC Searches: | actual cost |
| 21 | Witness fees: | actual cost |
| 22 | Working meals: | actual cost |

23 **XI. PRIOR COMPENSATION.**

24 1. In the days prior to the commencement of this bankruptcy case, Klein,
25 DeNatale received payments from the Debtor of \$25,000.00, which was paid to Applicant as an
26 advance retainer (the "Retainer") toward attorneys' fees and costs expended during the case.
27 The source of this compensation was the Debtor. Prior to the commencement of this case,
28 Klein, DeNatale accepted \$9,151.00 as payment for pre-petition fees and expenses. The
balance of the Retainer as of the date of this Application is \$0. The Debtor also agreed to pay
Klein, DeNatale such additional attorneys' fees and expenses as may be approved by this
Court. This is Klein, DeNatale's second application for interim compensation. A prior request

¹ No part of the automobile travel expense requested herein is attributable to travel by a professional, paraprofessional or other staff members, regardless of the day of the week or time of the day, between his or her residence and principal place of business. The mileage reimbursement rate is in conformity with the amount allowed by the Internal Revenue Service.

² Klein, DeNatale utilizes a messenger service only when circumstances warrant same say delivery or when the article delivered is of such import that its safe and timely deliver cannot be entrusted to the United States Postal Service.

³ Klein, DeNatale Utilizes overnight delivery services only when circumstances warrant deliver faster than can be achieved by first class mail.

⁴ No part of the parking expense requested herein is attributable to parking for professionals, para-professionals or other staff members at their principal place of business regardless of the day of the week or time of the day.

1 for compensation or reimbursement of expenses has been submitted by Klein, DeNatale for
2 attorneys' fees in the sum of \$17,047.00 and reimbursement of expenses in the sum of
3 \$2,722.95 for a total award of \$19,769.95. That prior request was granted by the Court on
4 September 11, 2009.

5 **XII. SOURCE OF COMPENSATION.**

6 The source of compensation to be paid to Applicant is cash held by the Debtor.

7 **XIII. NO SHARING OF COMPENSATION.**

8 No compensation previously received by Klein, DeNatale has been shared with any
9 other person, and no agreement or understanding exists between Klein, DeNatale and any other
10 person for the sharing of compensation received or to be received for services rendered in, or in
11 connection with, this case, except with regular members and associates of Klein, DeNatale.

12 **XIV. UNPAID CHAPTER 11 EXPENSE OF ADMINISTRATION OF CLAIMS.**

13 Other than the claim of Applicant set forth herein, there are no other unpaid Chapter 11
14 expenses of administration.

15 **XV. RELIEF REQUESTED.**

16 By this Application, Klein, DeNatale seeks both allowance and approval of payment of
17 all attorneys' fees and expenses incurred by Klein, DeNatale in its representation of the Debtor
18 from July 24, 2009 to November 30, 2009 by not yet compensated or reimbursed. Specifically,
19 Klein, DeNatale requests approval of this Chapter 11 attorneys' fees and expenses incurred
20 from July 24, 2009 to November 30, 2009 in the amount of \$19,270.50 and \$587.34,
21 respectively, for a total of \$19,857.84. After application of its Chapter 11 advance retainer of
22 \$0, the net amount prayed for by Applicant is \$19,857.84. In view of the time expended, the
23 responsibilities assumed, and the reputation and skill of Klein, DeNatale in the field of
24 bankruptcy and commercial law, Klein, DeNatale respectfully submits that the foregoing
25 represents the reasonable value of the services rendered. Klein, DeNatale believes that the
26 services rendered were necessary, and that the attorneys fees requested constitute reasonable
27 and necessary fees expended on behalf of the estate.

1 **WHEREFORE**, Klein, DeNatale prays that this Court entered its Order (i) approving
2 all attorneys fees incurred by Klein, DeNatale in its representation of the Debtor from July 24,
3 2009 through November 30, 2009 in the sum of \$19,270.50; (ii) approving reimbursement of
4 all expenses incurred by Klein, DeNatale in its representation of Debtor from July 24, 2009
5 through November 30, 2009 in the sum of \$587.34; (iii) authorizing the Debtor to pay Klein,
6 DeNatale the sum of \$19,857.84, for services rendered and costs expended from July 24, 2009
7 through November 30, 2009 in excess of the Retainer; (iv) for such other and further relief as
8 the Court deems just and proper.

9
10 Date: December 14, 2009

KLEIN, DENATALE, GOLDNER, COOPER,
ROSENLIEB & KIMBALL, LLP

11 By: /s/ Hagop T. Bedoyan

Hagop T. Bedoyan, Attorneys for Debtor-in-
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